

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA**

JOSE PADILLA, et al.,	)	
	)	
Plaintiffs,	)	Case No. 2:07-410-HFF-RSC
	)	
v.	)	
	)	
DONALD H. RUMSFELD, et al.,	)	
	)	
Defendants.	)	February 11, 2009

**JOINT NOTICE OF THE PARTIES**  
**RE PLAINTIFFS' ACTION IN THE NORTHERN DISTRICT OF CALIFORNIA**

By Order dated February 9, 2009 [doc. # 131], the Court instructed the parties to confer and file a joint submission clarifying the status of *Padilla v. Yoo*, 3-08-cv-35-JSW (N.D. Cal) and its relation to the instant action. In accordance with the Court's instruction, the parties have conferred and now respond to the Court's questions as follows:

1. **As to the status of *Padilla v. Yoo*, 3-08-cv-35-JSW (N.D. Cal. 2008):** Following the filing of an amended complaint, Mr. Yoo filed a motion to dismiss. That motion has been briefed but not argued. Please refer to point three below for more information.

2. **As to its relation to this case:** *Padilla v. Yoo* is a suit by Jose Padilla and Estela Lebron against John Yoo in his individual capacity. It presents some but not all of the factual allegations at issue in the instant case, and avers other facts not at issue here. Mr. Yoo has made some but not all of the arguments for dismissal that defendants in the instant case have made, and he has advanced other arguments not raised here. None of the Defendants in the instant case have been sued in the Northern District of California action. Mr. Yoo is a resident of Berkeley, California. At the time that the Plaintiffs filed the Northern District of California suit, those

individual defendants in this case who did not reside within the District of South Carolina had asserted a defense of lack of personal jurisdiction.

3. **As to the status of the pending motion to dismiss in the California action:**

The Northern District of California has set argument on the motion to dismiss for March 6, 2009. On the same date, the Northern District will also hear argument on whether it should permit Mr. Yoo to submit certain declassified but non-public memoranda under seal in support of his motion to dismiss.

4. **As to any res judicata effect:** This action and the Yoo action involve different defendants. Accordingly, neither case has any res judicata effect as to the other. To the extent that the Court's res judicata inquiry extends to potential "issue preclusion" or collateral estoppel effect, the Defendants maintain that there could be collateral estoppel effects depending upon the sequence and outcome of future litigation in the cases. The Plaintiffs agree that hypothetically there could be collateral estoppel effects depending on the sequence and outcome of future litigation in the cases, and maintain that those effects could not occur from the adjudication of either motion to dismiss.

5. **As to any other pertinent information:** Because the hearing in the Northern District of California is scheduled for 3/6/09, and involves cross-country travel and significant preparation, and because any objections to a Report and Recommendation must be filed within ten days, the parties respectfully request that this Court defer issuance of its Report and Recommendation until after 3/6/09, so that the parties will have a full opportunity to respond.

Respectfully submitted,

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**Dated: February 11, 2009**